

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Focal Communications Corporation and Corvis Corporation for Expedited *ex parte* Approval of An Indirect Transfer of Control, pursuant to Sections 852 and 854 of the California Public Utilities Code

Application 04-03-019  
(Filed March 15, 2004)

**OPINION AUTHORIZING TRANSFER OF CONTROL OF FOCAL COMMUNICATIONS CORPORATION TO CORVIS CORPORATION, INCLUDING THE TRANSFER OF THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OF FOCAL COMMUNICATIONS CORPORATION OF CALIFORNIA AND RELATED TRANSACTIONS**

**Summary**

This decision grants the joint application of Focal Communications Corporation (Focal) and Corvis Corporation (Corvis) for approval of the transfer of control of Focal to Corvis, including the transfer of the certificate of public convenience and necessity (CPCN) of Focal Communications Corporation of California (Focal CA), pursuant to Pub. Util. Code §§ 852 and 854.<sup>1</sup>

**Parties to the Transaction**

Focal is a privately-held Delaware corporation whose principal place of business is located in Chicago, Illinois. Focal is the holding company for a family of facilities-based national integrated communications enterprises. Through its subsidiaries, Focal is authorized to provide local and long distance services in

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<sup>1</sup> All subsequent Code references are to the Public Utilities Code, unless otherwise stated.

approximately 20 states and is also authorized by the Federal Communications Commission (FCC) to provide domestic and international services nationwide as a non-dominant carrier.

Focal CA is a privately held Delaware corporation that is authorized to do business in California. Focal CA is a wholly-owned subsidiary of Focal Financial Services, Inc., which is a wholly-owned subsidiary of Focal. Focal CA is authorized to operate in California as a local exchange and an interexchange carrier by Decisions (D.) 98-01-015 and 98-03-066, respectively.

Corvis is a Delaware corporation and a publicly traded company. Corvis' principal place of business is located in Columbia, Maryland. Corvis does not presently hold a CPCN to provide telecommunications services in this state. However, Corvis is the majority and controlling owner of Broadwing, L.L.C. (Broadwing). Broadwing is a provider of data, voice and video services. Broadwing has a CPCN to provide facilities-based and resold interexchange services in California.<sup>2</sup> Corvis' communications equipment division also designs, manufactures, and sells all optical and electrical/optical communication systems.

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<sup>2</sup> Broadwing received its CPCN to provide facilities-based interexchange services under the name C III Communications Operations, LLC (C III Ops). (D.03-08-020, as corrected by D.03-09-047.) C III Ops' name was later changed to Broadwing Communications, L.L.C., effective on September 22, 2003. In D.03-08-020, Broadwing was granted the authority previously held by Broadwing Communications Services, Inc. (Broadwing CSI) and Broadwing Telecommunications, Inc. (Broadwing TI). Broadwing-CSI received authority to resell telecommunications services in California on October 5, 1995 under the name IXC Long Distance, Inc. (IXC-LD) (D.95-10-007). In 1997, Broadwing-CSI received additional authority from the Commission to operate as a facilities-based carrier. IXC-LD's name was later changed to IXC Communications Services, Inc., and then to Broadwing CSI. Broadwing-TI received its authority to provide resold telecommunications services in California in 1997 under the name Network Long Distance, Inc (Network) (D.97-04-019). Network's name was later changed to Eclipse Communications, Inc., and then to Broadwing-TI.

Corvis Acquisition Company, Inc. (Corvis Acquisition) is a wholly-owned direct subsidiary of Corvis, which was created to carry out this transaction.

**Proposed Transaction**

Pursuant to the transaction, Corvis Acquisition will be merged with Focal. As a result, Focal CA and Focal Financial Services, Inc., will become indirect wholly-owned subsidiaries of Corvis, so that Corvis will acquire control of Focal CA.

The applicants represent that the transaction will improve the financial stability of Focal CA, because Corvis is a publicly traded company with a market capitalization of approximately \$1 billion and cash reserves of over \$500,000,000. Applicants also state that following the transfer of control, Focal CA will be able to rely on its new parent company, Corvis, for additional financial resources to support continued operations and to further expand Focal CA's services.

The applicants represent that the transaction will be transparent to customers. There will be no change in the name of Focal CA, and Focal CA's management will change only at the holding company level. It is expected that the management of Focal CA is responsible for day-to-day operations of the company will remain the same. Customers will continue to receive service under the same rates, terms, and conditions after the transaction is approved.

**Discussion**

Under § 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state . . . ." The purpose of these and related sections is to

enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Although Corvis does not directly hold a CPCN, Focal has a CPCN to operate as a local exchange and interexchange carrier. We therefore apply the requirements for such authority to Corvis.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Corvis has provided financial statements and other evidence that demonstrates that it has sufficient resources to meet our financial requirements. Since Focal CA is expected to continue to operate under the same management, and Corvis has significant experience in the telecommunications field, we find that our requirement for technical expertise is satisfied. The transaction will improve Focal CA's access to capital, which should improve Focal CA's financial

position and ability to serve customers.<sup>3</sup> In addition, it will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to §§ 852 and 854.

### **Comments on Draft Decision**

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3131 dated April 1, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Focal CA is a wholly-owned subsidiary of Focal Financial Services, which is a wholly owned subsidiary of Focal.
2. Focal does not hold a CPCN to provide telecommunications services in this state but is authorized to provide local and long distance services in 20 states through its subsidiaries.

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<sup>3</sup> Focal CA filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code on December 19, 2002 and has been operating under the protection of the bankruptcy court. See D.03-04-003 and D.03-06-055. In 2003, we granted Focal CA authorization to discontinue service to approximately 41 business customers and its special access DSL service in this state in order to assist Focal to operate more efficiently. *Id.*

3. By D.98-01-015 and D.98-03-066, Focal CA was granted a CPCN to operate in California as a limited facilities-based and resale interexchange carrier.

4. Corvis does not hold a CPCN to provide telecommunications services in this state.

5. Corvis has experience in the telecommunications field, because its subsidiary, Broadwing, has a CPCN to provide facilities-based and resold interexchange services in this state, and because Corvis designs, manufactures, and sells communications systems.

6. As a result of the transaction, Corvis will own Focal and therefore will own and have ultimate control of Focal CA.

7. There will be no change in the name or day-to-day management of Focal CA as a result of the transaction.

8. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.

9. Corvis has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.

10. Corvis possesses the necessary technical expertise to meet applicable Commission requirements..

11. Notice of this application appeared on the Commission's Daily Calendar on March 19, 2004.

12. There were no protests to this application.

13. No hearings are necessary.

**Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.
2. Corvis meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.
3. The transaction is not adverse to the public interest.
4. In order to avoid delaying this transaction, this decision should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Pursuant to Pub. Util. Code §§ 852 and 854, the joint application of Focal Communications Corporation (Focal) and Corvis Corporation (Corvis) for approval of the indirect transfer of control of Focal, including Focal Communications Corporation of California, to Corvis is approved.
2. This application is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.